

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

TCW SPECIAL CREDITS, et al.,
Plaintiffs,
vs.
F/V CHLOE Z, et al.,
Defendants.

Civil Case No. 96-00055

ORDER

ROBERT MATOS, et al.,
Plaintiff-Intervenors,
vs.
M/V CHLOE Z, et al.,
Defendants.

The court hereby advises the parties that it received the attached letters on July 7, 2008, one dated June 5, 2008 from Craig Miller, Esq. and a follow up letter dated June 30, 2008 from Attorney Michael A. Barcott. The court apologizes that it only received the June 5th letter on July 7th but notes that there were internal routing problems. Those have since been corrected. In light of this court's concern that immediate action be taken, the court hereby orders the United States Magistrate Judge to move expeditiously and sets this matter for a status conference on August 19, 2008 at 9:30 a.m.

SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Jul 07, 2008



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

CRAIG MILLER
DIRECT (206) 757-8104
craigmiller@dwt.com

SUITE 2200
1201 THIRD AVENUE
SEATTLE, WA 98101-3045

TEL (206) 422-3150
FAX (206) 757-7700
www.dwt.com

June 5, 2008

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CHIEF JUDGE'S CHAMBERS
DISTRICT COURT OF GUAM

VIA FACSIMILE AND FIRST CLASS MAIL

Fax: (671) 473-9186

Fax: 671) 473-9118

Hon. Frances Tydingco-Gatewood
Chief Judge, U.S. District Court of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagåtña, Guam 96910

Hon. Joaquin V.E. Manibusan, Jr.
Magistrate Judge, U.S. District Court of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagåtña, Guam 96910

Re: *TCW Special Credits v. Fishing Vessel CHLOE Z*
U.S. District Court, Territory of Guam, No. 96-0055 (the "Action")

Your Honors:

I write to ask respectfully that the Court take prompt steps to resolve this 12 year old lawsuit. This case has been awaiting for many months a decision on limited final issues. Meanwhile, some \$1,800,000 cash, earning meager interest, remains in the Clerk's registry, to be distributed on judgment. The interests of the remaining parties are being adversely affected because of the delay.

Summary of Status of Case and Issues Remaining for Decision.

My client is TCW Special Credits, the holder of the ship mortgage on the F/V CHLOE Z.

The F/V CHLOE Z was arrested at Guam on July 5, 1996, nearly 12 years ago. TCW Special Credits initiated the arrest, in order to foreclose on its ship mortgage lien. At the time of her arrest, the vessel was also subject to other liens, including crewmens' wage liens and provisioners' liens. Also pending were personal injury claims by injured crewmen. The vessel and her fish cargo were sold within a few months of the arrest, and the cash proceeds of the sales were deposited into the Clerk's registry.

Over the years, the case involved protracted litigation over many issues, and especially over two major issues:

First, there was a complex dispute over the amount of wages the crew was entitled to receive under 46 USC § 11107. Following two trials, appeals and a settlement, that issue was fully resolved in 2001.

Second, with respect to injured crewmen Robert Matos and Slobodan Pranjic, there was a dispute over whether their claims were *in personam* only or also *in rem*. If, and to the extent that, the claims were *in rem*, then the awards would be secured by liens against the vessel (and thus against the proceeds of sale of the vessel). The US District Court ruled that those claims were *in personam* only. However, in June 2006, the Ninth Circuit Court of Appeals reversed this Court and ruled in favor of the seamen, thus determining that they hold both *in rem* and *in personam* claims. (There is no issue as to the priority of the *in rem* liens. The Matos and Pranjic liens have priority over TCW's ship mortgage lien.)

At this point, the only remaining issue is the final determination of the amounts of the Matos and Pranjic *in rem* claims. The Matos and Pranjic *in rem* claims, in the amounts as may be finally determined, will be paid from the residual vessel sale proceeds held by the Clerk. As noted, those proceeds are about \$1,800,000. After payment of the Matos and Pranjic liens, the remaining proceeds then will go to TCW Special Credits, as partial payment of its ship mortgage lien (the unpaid deficiency on TCW's ship mortgage lien is more than \$10 million).

As TCW Special Credits understands things, the F/V CHLOE Z accepts that Matos and Pranjic should receive at least the principal amounts of their judgments—Matos in the amount of \$533,469; and Pranjic in the amount of \$621,514—plus certain interest and costs. Matos and Pranjic, however, contend they are owed substantially more, chiefly based on their (disputed) claim of additional categories of interest accrued on their awards.

Thus, the remaining issues require the Court to make a limited number of legal decisions, primarily regarding the awardability of accrued interest. Once the Court decides those questions, F/V CHLOE Z and Claimants Matos and Pranjic then between them should be able to agree on the computations of the final lien amounts.

TCW Special Credits emphasizes that it does not take a position, as such, on the issues relevant to the calculation of the Matos and Pranjic liens. TCW Special Credits is merely a junior lienholder with an interest in the residual vessel sale proceeds.

The relevant issues were briefed and argued to Magistrate Manibusan on April 26, 2007.

By Report and Recommendation dated May 3, 2007 (Docket No. 1623), Magistrate Manibusan recommended, in relevant part, that: (1) the Clerk prepare a report of the vessel sale proceeds held in the Clerk's registry; and (2) any disbursement from the Clerk's registry, as requested by Matos and Pranjic, be deferred until the Chief Judge ruled on the underlying issues involving the correct amount of the Matos and Pranjic liens.

By Order dated July 2, 2007 (Docket No. 1633), the Chief Judge adopted the Magistrate's Report and Recommendation. However, the Chief Judge indicated that the substantive issues involving the correct amount of the Matos and Pranjic liens were to be deferred until the Magistrate had made a further report and recommendation on those issues. Thus, it appears that the matter is now pending before the Magistrate.

As recommended by the Magistrate, and adopted and ordered by the Chief Judge, the Clerk of the Court did file a report on the vessel sale proceeds. The Clerk filed that report on July 5, 2007.

Nothing has occurred since that date.

Requested Procedure.

Each of the remaining parties—the Claimants, the F/V CHLOE Z, and TCW—is represented by stateside counsel. TCW Special Credits believes that this matter can and should be resolved by the Court ordering all off island and local counsel to appear in person for an omnibus hearing on the remaining issues.

An omnibus hearing is appropriate for resolution of the remaining issues, which tend to be intricate and based on the complexities of the huge record of the case, but not particularly complex in legal terms. At an omnibus hearing, all issues can be resolved then and there, including any issues involving the arithmetic of final interest calculations. Counsel should be required to remain on island, at the direction of the Court, until final judgment is entered.

I believe that such an omnibus hearing could be completed efficiently, perhaps in a couple of hours but certainly in less than one-half day, if only all counsel were present before the Court. But, in order to get this done, once and for all, it appears useful and necessary that all counsel be present in person.

TCW Special Credits requests that such omnibus hearing be set as soon as possible.

Prior to sending this letter to the Court, the request contained in this letter was presented to counsel of record for all parties. No party objects to this request. (It is to be noted that Claimants Matos and Pranjic recently have retained new counsel, Mr. Kurt Micklow, of San Francisco, CA. Mr. Micklow is highly familiar with this overall case, since he represented crewmen on the wage claims.)

Thanks to Your Honors for your attention to this request. I am sure that the Court, the Clerk, and Court staff, as well as the parties, also would like to wrap up this long-pending matter.

Hon. Frances Tydingco-Gatewood
Hon. Joaquin V.E. Manibusan, Jr.
June 5, 2008
Page 4



A list of all counsel is shown below.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'Craig Miller' followed by a stylized flourish or 'hlp'.

Craig Miller

cc: Attorneys for F/V CHLOE Z
Ms. Anita Perez Arriola
Arriola, Cowan & Arriola
Suite 201, C and A Professional Bldg.
259 Martyr St.
Hagåtña, Guam 96910

Mr. Michael A. Barcott
Holmes Weddle & Barcott
999 Third Ave., Ste. 2600
Seattle, WA 98104

Attorneys for Pranjic and Matos
Mr. Jeffrey A. Cook
Cunliffe & Cook, P.C.
Ste. 200, 210 Archbishop F.C. Flores St.
Hagåtña, Guam 96910

Mr. Kurt L. Micklow
Banning Micklow & Bull LLP
One Market, Steuart Tower, Suite 1440
San Francisco, CA 94105

Former Attorneys for Pranjic and Matos
Mr. George M. Butler
Law Offices of Butler & Telford Butler
Ste. 203, American Life Bldg.
137 Murray Boulevard
Hagåtña, Guam 96910

Mr. Dwight F. Ritter

Hon. Frances Tydingco-Gatewood
Hon. Joaquin V.E. Manibusan, Jr.
June 5, 2008
Page 5



Ritter & Associates
2869 India Street
San Diego, CA 92103

Attorneys for TCW Special Credits

Mr. Louie J. Yanza
Maher Yanza Flynn Timblin LLP
115 Hesler Place, Ground Fl.
Gov. Joseph Flores Bldg.
Hagåtña, Guam 96910-5004

Mr. Craig Miller
Davis Wright Tremaine LLP
1201 3rd Avenue, Suite 2200
Seattle, WA 98101-3045

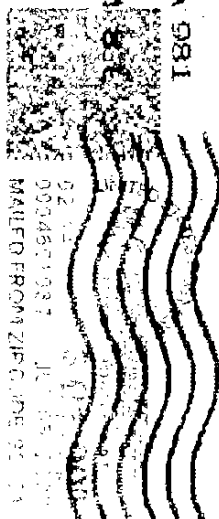
Davis Wright Tremaine LLP

SUITE 2200
1201 THIRD AVENUE
SEATTLE, WA 98101-5045

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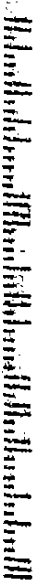
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Hon. Frances Tydingco-Galewood
Chief Judge, U.S. District Court of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagåtña, Guam 96910

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LAW OFFICES OF
HOLMES WEDDLE & BARCOTT
A PROFESSIONAL CORPORATION

WELLS FARGO CENTER · 999 THIRD AVENUE, SUITE 2600 · SEATTLE, WASHINGTON 98104-4011
TELEPHONE (206) 292-8008 · FAX (206) 340-0289

MICHAEL A. BARCOTT
EMAIL: mbarcott@hwb-law.com

June 30, 2008

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VIA FACSIMILE AND FIRST CLASS MAIL

(671) 473-9186

(671) 473-9118

**CHIEF JUDGE'S CHAMBERS
DISTRICT COURT OF GUAM**

Hon. Frances Tydingco-Gatewood
Chief Judge, U.S. District Court of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagatna, Guam 96910

Hon. Joaquin V.E. Manibusan, Jr.
Magistrate Judge, U.S. District Court of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagatna, Guam 96910

**Re: TCW Special Credits v. Fishing Vessel CHLOE Z
U.S. District Court, Territory of Guam, No. 96-0055
Our File No. 2446.13835**

Dear Judge Tydingco-Gatewood and Judge Manibusan, Jr.:

I am in receipt of Mr. Miller's letter of June 5, 2008. The fishing vessel CHLOE Z, would like this litigation to come to a resolution and we would be pleased to attempt to discuss such a resolution with all parties. Given the distances and times involved, however, the CHLOE Z cannot agree to an in-person conference in Guam with all counsel. We are represented in Guam by Anita Arriola. Ms. Arriola can certainly attend a conference on behalf of CHLOE Z and, regardless of the time stateside, I will be readily available by telephone if such a conference takes place.

Very truly yours,



Michael A. Barcott

MAB:tg

Cc: Craig Miller
Dwight Ritter
Bill Banning
Anita Arriola

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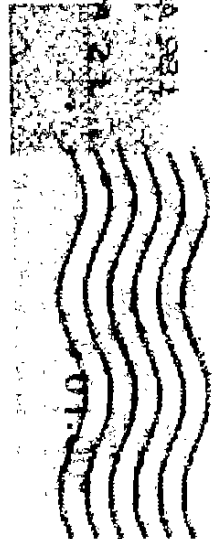
LAW OFFICES OF
HOLMES WEDDLE & BARCOTT
A PROFESSIONAL CORPORATION

WELLS FARGO CENTER
909 THIRD AVENUE, SUITE 2600
SEATTLE, WASHINGTON 98104-4011

SEATTLE WA 981

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PM 2:11



Hon. Frances Tydingco-Gatewood
Chief Judge, U.S. District of Guam
4th Floor, U.S. Courthouse
520 West Soledad Avenue
Hagatna, Guam 96910

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